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OPEN MEETING COVER SHEET

MEMORANDUM AND PROPOSAL FOR PUBLICATION

MEETING DATE:	May 11, 2023
DATE DELIVERED:	May 04, 2023
AGENDA ITEM NO.:	9
CAPTION:	Project No. 54932 – Review of §24.101, Water Rate Appeals
DESCRIPTION:	Memo and Proposal for Publication

Public Utility Commission of Texas

Memorandum

TO: Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

FROM: David Smeltzer, Director of Rules and Projects

DATE: May 04, 2023

RE: May 11, 2023 Open Meeting – Agenda Item No. 9
Project No. 54932 – *Review of §24.101, Water Rate Appeals*

Please find attached to this memorandum Commission Staff's proposal for publication in the above-referenced project for consideration at the May 11, 2023 Open Meeting. Commission Staff proposes amendments to 16 Texas Administrative Code §24.101, relating to Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043. The proposed changes will align Commission rules with changes made to Texas Water Code §13.043 by House Bill 3689 and Senate Bill 387 enacted by the 87th Texas Legislature (Regular Session).

Commission Staff recommends the Commission approve this draft for publication in the *Texas Register*.

PROJECT NO. 54932

REVIEW OF §24.101 -	§	PUBLIC UTILITY COMMISSION
	§	
WATER RATE APPEALS	§	OF TEXAS
	§	

(STAFF RECOMMENDATION)

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §24.101
FOR CONSIDERATION AT THE MAY 11, 2023 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §24.101, relating to Appeal of Rate-making Decision, Pursuant to the Texas Water Code (TWC) §13.043. This proposed rule will implement TWC Chapter §13.043 as revised by Senate Bill 387 and House Bill 3689 during the Texas 87th Regular Legislative Session. The amended rule expands the commission's appellate authority by allowing ratepayers to appeal water and sewer rates set by a municipally owned utility for ratepayers previously served by another retail public utility, in certain situations. The amendments also clarify that in an appeal under this section, the commission will ensure that every appealed rate is just and reasonable.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Tex. Gov't Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will change the number of individuals subject to the rule's applicability by altering when certain rate decisions can be appealed to the commission; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Tammy Benter, Director, Utility Outreach Division has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Tex. Gov't Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have an avenue to appeal the rates charged by a municipality for retail water or sewer service in certain situations. There will be no probable economic cost to persons required to comply with the rule under Tex. Gov't Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Tex. Gov't Code §2001.022.

Costs to Regulated Persons

Tex. Gov't Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Tex. Gov't Code §2001.029. The request for a public hearing must be received by June 16, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by June 16, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number **54932**.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amended rule is proposed under TWC §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by TWC that is necessary and convenient to the exercise of that power and jurisdiction; TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also proposed under TWC §13.043, which relates to appellate jurisdiction of the Commission.

Cross Reference to Statute: Texas Water Code §13.041(a); §13.041(b); and §13.043.

§24.101. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

- (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.

- (b) An appeal under Texas Water Code (TWC) §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under TWC §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, sewer utility, or drainage rates to the commission:

- (1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;
- (2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;
- (3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public utility;

(A) A municipally owned utility must:

- (i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and
- (ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any

person. A municipally owned utility must inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code §182.052 in any notice provided under the requirement of TWC§13.043(i).

(C) In complying with this subsection, the municipally owned utility:

- (i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;
- (ii) will provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and
- (iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.

(D) This paragraph does not apply to a municipally owned utility that takes over the provision of service to ratepayers previously served by another retail public utility if the municipally owned utility:

- (i) takes over the service at the request of the ratepayer;
- (ii) takes over the service in the manner provided by TWC Chapter 13, Subchapter H; or
- (iii) is required to take over the service by state law, an order of the Texas Commission on Environmental Quality, or an order of the commission.

(4) a district or authority created under Article III, §52, or Article XVI, §59 of the Texas Constitution, that provides water or sewer service to household users;

- (5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority will be considered a separate class from ratepayers who reside inside those boundaries; and
 - (6) in an appeal under this subsection, the retail public utility must provide written notice of hearing to all affected customers in a form prescribed by the commission.
- (d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.
- (e) The commission will hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:
 - (1) in an appeal under TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;
 - (2) in an appeal under TWC §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;
 - (3) establish the effective date;
 - (4) order refunds or allow surcharges to recover lost revenues;

- (5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or
 - (6) establish interim rates to be in effect until a final decision is made.
- (f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.
- (g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.
 - (1) If the commission finds the amount charged to be clearly unreasonable, it will establish the fee to be paid and will establish conditions for the applicant to pay any amount(s) due to the affected county or water supply or sewer service

corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) determined in the commission's order must be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.

- (2) In an appeal brought under this subsection, the commission will affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.
 - (3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.
- (h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

- (i) In an appeal under this section, the commission will ensure that every appealed rate is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission will use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.
- (j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer must initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission will approve the water supply corporation's water conservation penalty if:
- (1) the penalty is clearly stated in the tariff;
 - (2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and
 - (3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE ____ DAY OF _____ 2023 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS**

ADRIANA GONZALES